



Washington State Senate

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Senator Lynda Wilson
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January 5, 2024

Mr. Stoyan Bumbalov
Executive Director
State Building Code Council
PO Box 41449
Olympia, WA 98504-1449

Re: 2021 State Commercial Energy Code amendments

Dear Mr. Bumbalov,

I am writing to inquire when the State Building Code Council will submit the state commercial energy code amendments approved at its November 28, 2023 meeting to the legislature for approval.

As you know, RCW 19.27A.025 requires legislative approval of commercial energy code amendments where those amendments fail to garner a two-thirds majority vote of the Council.¹ Both the recommendation by Assistant Attorney General Dierk Meierbachtol, advising the Council on this matter, and the actions of the Council taken at its December 12, 2023 meeting make clear that the November 28, 2023 meeting vote to approve the amendments to the commercial energy code did not reach the two-thirds threshold required.²

At the December 12 meeting, Mr. Meierbachtol noted that the November 28 council meeting "met the 8-vote threshold for approval required by the statute and council bylaws, [but] the vote did not appear to meet the two-thirds vote threshold established in RCW 19.27A.025."³ Further, councilmember Kjell Anderson, in supporting action on the commercial energy code at the December 12 meeting explained that there would be a delay in the codes if the Council left "the Commercial Energy Code

¹ RCW 19.27A.025(3) requires "[a]ny disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into full effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote."

² https://www.sbcc.wa.gov/sites/default/files/2023-12/Draftsm12122023_rg_1.pdf. Minutes of the December 12, 2023 Council Meeting.

³ Id. at Item 2.

up to the legislature to act upon."⁴ The Council subsequently voted to amend the November 28 amendments in order to attempt to bypass the two-thirds requirement.⁵

While the final vote held at the December 12 meeting to amend the previous motion succeeded by more than the required two-thirds to avoid legislative action, this motion only did so for the amended provision, an inserted table that had been missed at the prior meeting.⁶ Notably, this vote did not amend any of the other provisions amended in the November 28 meeting.⁷ Unlike a vote to rescind the previous motion, which would have completely undone the November 28 meeting vote, a vote to amend the previous motion does not undo the previous vote except as to the amended provision. As a result, all other provisions amended in that meeting are subject to the two-thirds requirement and must be submitted to the legislature for approval under RCW 19.27A.025.

Because the various building codes have the force of law, the most appropriate method of seeking approval of the legislature is to submit a bill request from the State Building Code Council. The legislature is constrained by the state Constitution that "no laws shall be enacted except by bill."⁸ As a result, a bill request to approve and require the Council adopt the disputed amendments to the commercial energy code as discussed above is most appropriate.

Please advise me on when the legislature may expect your agency request legislation so that it may be scheduled in a timely manner. I look forward to your response.

Sincerely,



Senator Lynda Wilson
17th Legislative District

Cc: State Building Code Council Members
Dierk Meierbachtol, Assistant Attorney General

⁴ Id.

⁵ Id. at Item 4, Motion by Kjell Anderson to amend the prior motion amending the commercial energy code held on November 28, 2023.

⁶ Id.

⁷ Compare https://www.sbcc.wa.gov/sites/default/files/2023-2/Main%20motions_Council%20Meeting_112823.pdf (amending the previous motion by inserting a missing table) and https://www.sbcc.wa.gov/sites/default/files/2023-11/Motions%20and%20Votes%20at%20the%20Council%20Meeting_112823.pdf (amending multiple parts of the commercial energy code)

⁸ Washington State Constitution, Article 2, Section 18.